

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



74-2248

To be argued by  
WILLIAM J. COSGROVE

**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

**Docket No. 74-2248**

ECONOMIC OPPORTUNITY COMMISSION OF  
NASSAU COUNTY, INC.,

*Appellant,*

*—against—*

CASPAR WEINBERGER, individually and in his capacity as Secretary of the Department of Health, Education and Welfare; BERNICE BERNSTEIN, individually and in her capacity as Regional Director of the Department of Health, Education and Welfare, Region 2, SAUL ROSOFF, individually and in his capacity as Acting Director of the Office of Child Development, the Department of Health, Education and Welfare; JOSE DIAZ, individually and in his capacity as Regional Program Director of the Office of Child Development of the Department of Health, Education and Welfare for Region 2, and LESTER MILLER, individually and in his capacity of Board Chairman of the Glen Cove Child Day Care Center, Inc.,

*Federal Appellees.*

APPEAL FROM DECISION OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

**BRIEF FOR APPELLEE LESTER MILLER**

WRENN & SCHMID,  
*Attorneys for Appellee Lester Miller,*  
26 Court Street,  
Brooklyn, N.Y. 11242.  
(212) 852-676.

WILLIAM J. COSGROVE,  
*Of Counsel.*

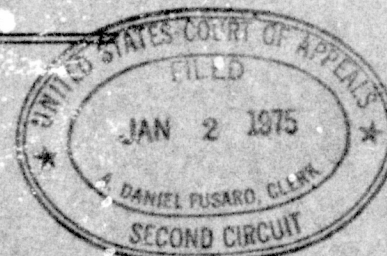


TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE CASE	1
ARGUMENT AND CONCLUSION	4



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x  
ECONOMIC OPPORTUNITY COMMISSION OF NASSAU  
COUNTY, INC.,

Appellant,

-against-

CASPAR WEINBERGER, individually and in his  
capacity as Secretary of the Department of  
Health, Education and Welfare; BERNICE  
BERNSTEIN, individually and in her capacity  
as Regional Director of the Department of  
Health, Education and Welfare, Region 2;  
SAUL ROSOFF, individually and in his capacity  
as Acting Director of the Office of Child  
Development of the Department of Health,  
Education and Welfare; JOSUE DIAZ, individually  
and in his capacity as Regional Program Director  
of the Office of Child Development of the  
Department of Health, Education and Welfare for  
Region 2; and LESTER MILLER, individually and  
in his capacity of Board Chairman of the Glen  
Cove Child Day Care Center, Inc.,

Case Number  
74-2248

Appellees.

-----x

BRIEF FOR APPELLEE LESTER MILLER

### STATEMENT OF THE CASE

The assertion in the "Statement of the Case" in Appellant's Brief (P.5) that GCEOC (Glen Cove Economic Opportunity Council, Inc.) "did in fact administer the Headstart Program (in Glen Cove) until March, 1972" and that this action grew out of an attempt by the Glen Cove Child Care Center (hereafter referred to as GCD) to take the Program away from the Appellant and GCEOC in 1972 is the opposite of the truth.

GCD administered the Headstart Program in Glen Cove from the inception of that program under the Economic Opportunity Act until GCD was "defunded" by the Appellant in 1972. This is clearly established by the corporate minutes, letters, etc., too numerous to cite here, in the Federal Defendants' Exhibits in the record, and see P.31 of Appellant's Brief mentioning "Appellant's decision to defund GCD."

Affidavits and letters attached to the Answer of Appellee LESTER MILLER, addressed to the Court below by the Glen Cove Superintendent of Schools, by the professional-educator wife of Greenvale School, one of the most highly regarded private schools in the country, by the then Chairman of the Glen Cove NAACP Branch, by a Justice of the Supreme Court who is a native of Glen Cove and who served a



term as President of GCD, and by other community leaders, testified to the high quality of the Head Start Program as conducted by GCD.

GCD pioneered in Project Headstart ideas before they were incorporated into the Economic Opportunity Act of 1966. The importance of parental involvement and participation in the development of the program, in important decision making and in all levels of the conduct of the program, is an obvious concept and an ideal which was vigorously pursued by GCD from the beginning.

The "Headstart Memorandum of Understanding" signed by the Secretary of Health, Education and Welfare and the Director, Office of Economic Opportunity, on June 28, 1969, states that:

"5. Measures shall be taken to foster the maximum participation of parents in the program...  
(and)

(b) Each local program shall encourage participation of parents..."

The reasons given by the Appellant for defunding GCD were isolated examples of failures to achieve 100% participation of parents.

The Documents submitted to HEW by GCD in the Administrative Appeal, pages 23 - 77, show that "measures" were being taken continuously to encourage and foster

parental participation in the program in all respects as set forth in said Memorandum of Understanding. The Court should assume that the offices of Child Development charged with the day to day administration of the Headstart Program under the Secretary of HEW had intimate knowledge of the conduct of the Glen Cove program. Minutes of meetings of the GCD Board and Committees frequently mention the presence of representatives of these offices.

It is respectfully suggested that the Court can take judicial notice of the fact that it is almost impossible to persuade mothers to faithfully attend evening meetings instead of staying home to take care of the needs of their families after working all day in a laundry or in doing the heavy housework in someone else's home.

Appellant's Brief argues (on page 30) that:

"The only factor that has prevented EOC from conducting an effectual Project Headstart in the Glen Cove area is the Director's decision to defund them."

Yet the record in the Court below shows that the Appellant could not even keep a Glen Cove Economic Opportunity Commission continuously in existence, but that from time to time the Appellant's Executive Director had to "put the GCEOC in receivership" and discharge its functions



personally with the aid only of a rubber stamp signature of the Chairman of the Appellant.

The issue in this case is whether a successful local grass-roots program having the enthusiastic participation of upwards of a hundred concerned local professional and other outstanding citizens, plus all the parental participation that with the expenditure of heroic efforts could be enlisted, should be "defunded" and displaced by an anachronistic post-civil war carpetbagger system.

POINT

ARGUMENT AND CONCLUSION

No promulgation of formal procedural rules or regulations were needed to enable the office of HEW to review the simple facts of this case and reasonably to determine that the allegations by the Appellant of fatal defects and deficiencies in the administration and operation of the GCD were not established, and that the "defending" of GCD by the Appellant was arbitrary and unjustified. A reversal of the decision of the District Court by this Court would strip the Department of Health, Education and Welfare of real power to administer Project Headstart.

WILLIAM J. COSGROVE  
of Counsel.

Respectfully Submitted,  
WRENN & SCHMID





2 Copies received

1/2/75 10:20 AM

Charles F. Smith  
att'y for Apple

RECEIVED  
U. S. ATTORNEY

JAN 2 11 40 AM '75

EAST. DIST. N. Y.

Sylvia E. Morris